

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INVENTIO AG,

Plaintiff,

V.

C.A. No. 08-874-RGA

THYSSENKRUPP ELEVATOR AMERICAS
CORPORATION, THYSSENKRUPP
ELEVATOR CORPORATION, and
THYSSENKRUPP ELEVATOR
MANUFACTURING INCORPORATED,

Defendants.

Michael J. Flynn, Esquire, Morris, Nichols, Arsht & Tunnell, LLP; and Pierre R. Yanney, Esquire, Stroock & Stroock & Lavan LLP, Attorneys for Plaintiff Inventio AG

James Michael Lennon, Esquire, Womble Carlyle Sandridge & Rice PLLC; and David E. Schmit, Esquire, Frost Brown Todd LLC, Attorneys for Defendants

**REPORT AND RECOMMENDATION ON (1) THYSSENKRUPP'S FIFTH
MOTION TO COMPEL, (2) DEFENDANTS' MOTION TO COMPEL AND FOR LEAVE
TO TAKE ADDITIONAL 30(b)(6) DEPOSITION OF PLAINTIFF INVENTIO
AND RELATED THIRD-PARTY SCHINDLER ELEVATOR CORPORATION, (3)
INVENTIO'S MOTION TO COMPEL, AND (4) INVENTIO'S MOTION TO EXTEND**

Collins J. Seitz, Jr., Special Master

On April 8, 2013, the Special Master held a teleconference with counsel to rule on the discovery issues raised in the following motions and requests for relief: (1) ThyssenKrupp's Fifth Motion to Compel (D.I. 279); (2) Defendants' Motion To Compel And For Leave To Take Additional 30(b)(6) Depositions Of Plaintiff Inventio And Related Third-Party Schindler Elevator Corporation (D.I. 292); (3) Inventio's Motion To Compel (D.I. 298), and (4) Inventio's Motion To Extend, and related papers.

For the reasons stated in the transcript of the teleconference of April 8, 2013, the Special Master recommends that the pending motions and requests for relief be resolved as follows:

Inventio's Motion To Compel

Information About "New" Destination Dispatch Overlay Modernization Jobs: Denied.

Maintenance Revenues: Granted in part. ThyssenKrupp shall produce the spreadsheet of maintenance revenues received for the three ThyssenKrupp installations presently at issue as identified in Paragraph 4 of its April 5, 2013 letter by April 15, 2013.

Interrogatory No. 3: Granted in part. ThyssenKrupp shall provide a response to this Interrogatory, consistent with Fed. R. Civ. P. 33(d), identifying with particularity the documents being referred to, by April 22, 2013.

Interrogatory No. 6: Denied.

Document Requests 69, 71, 73 and 75: Denied. Because the parties cannot agree to a procedure to use for access to source code, the procedure outlined in the Delaware Default Standard for Access to Source Code shall apply.

Supplementation of Document Requests and 30(b)(6) Depositions: Denied, except that Inventio is entitled to a Rule 30(b)(6) deposition of ThyssenKrupp on financial issues that were not adequately addressed in the prior deposition of ThyssenKrupp. The topics of this deposition shall include the maintenance revenues from the three ThyssenKrupp installations presently at issue, but will not cover ThyssenKrupp's "new" jobs.

ThyssenKrupp's Fifth Motion to Compel

Category 1: Granted. Inventio shall provide information and necessary detail to ThyssenKrupp concerning where the documents responsive to Document Requests Nos. 2 and 3 can be located by April 22, 2013.

Category 2: Dispute is moot.

Category 3: Granted in part. Inventio shall either provide the requested verifications or shall stipulate that it will not challenge the Interrogatory verifications signed by Dr. Gaussmann on the grounds that they fail to meet the requirements of 28 U.S.C. §1746.

Document Requests Nos. 59-61: Granted in part. For any documents located, they shall be produced by April 15, 2012.

Document Request No. 62: Request for a sworn verification that documents do not exist is denied. Dispute concerning the non-reexamination documents is moot because Inventio has searched for the documents and represents that they do not exist. Request for reexamination documents is denied.

Document Request Nos. 65 and 66: Granted in part. Inventio shall search the B66B database using the search terms contained in the email from David Schmit to Pierre Yanney dated February 12, 2013 (A140) and produce the resulting documents by April 22, 2013.

Document Request No. 68: Denied.

Document Request Nos. 69-70: Granted in part. To the extent in Inventio's possession or control, Inventio shall produce the final version of the Transfer Pricing Analysis and related appendices by April 22, 2013.

Document Request 71: Dispute is moot.

Document Request No. 72: Granted in part. Inventio shall produce responsive documents to the extent Inventio performs research and development by directing others to do the work (including the requested financial documents), and to the extent such documents have not already been produced.

Document Request No. 73: Granted in part. To the extent the documents are in Inventio's possession or control and have not already been produced, Inventio shall produce documents concerning how the "5.5%" number was arrived at and documents showing how the "reasonable range" of royalty rates were arrived at by April 22, 2013.

Document Request No. 74: Granted in part. Inventio shall produce U.S. licenses responsive to this request, to the extent the documents have not already been produced, by April 22, 2013. The request for non-U.S. licenses is denied.

Document Request No. 75: Dispute is moot.

Document Request No. 76: Denied.

Document Request No. 77: Denied.

Document Request No. 78: Denied.

Document Request No. 79: Granted. Inventio shall produce responsive documents, to the extent in its possession or control, by April 15, 2013.

Document Request Nos. 80-82: Granted. Inventio shall produce responsive documents, to the extent in its possession or control, by April 22, 2013.

Interrogatory No. 13: Granted in part. Inventio shall answer this Interrogatory to the extent it has knowledge concerning the entities and individuals that contributed to the Transfer Pricing Analysis by April 22, 2013.

**Defendants' Motion To Compel And For Leave To Take Additional 30(b)(6) Depositions
Of Plaintiff Inventio And Related Third-Party Schindler Elevator Corporation**

Inventio Topics 1-2: Granted in part. Inventio shall produce a 30(b)(6) witness to testify concerning changes to the license agreements between Inventio and Schindler since March 5, 2010, including the changing royalty rate from year to year. Inventio has the right to insist on conducting the deposition by telephone if it so chooses. The deposition will be limited to a total of three hours.

Inventio Topics 3-5: Denied.

Inventio Topics 6-10: Denied.

Inventio Topics 13-10, 22-23: Denied.

Inventio Topic 18: Denied.

Inventio Topic 19: Granted in part. To the extent there is an Inventio witness knowledgeable, Inventio shall produce a 30(b)(6) witness to testify concerning this Topic. Inventio has the right to insist on conducting the deposition by telephone if it so chooses. The deposition will be limited to a total of two hours.

Inventio Topic 20: Denied.

Inventio Topic 24: Denied.

Inventio Topic 25: Denied.

Inventio Topics 26-27: Denied.

Inventio Topic 28: Denied.

Inventio Topics 29-20: Denied.

Inventio Topics 31-35: Denied.

Inventio Topics 36-44: Denied.

Schindler Topics 1-4: Denied.

Schindler Topics 5-7, 11: Denied.

Schindler Topics 8-10: Denied.

Schindler Topic 12: Denied.

Schindler Topic 13: Denied.

Schindler Topic 14: Denied.

Schindler Topic 15: Denied.

Inventio's Motion to Extend

The request for an extension of the case schedule is denied. The parties may reasonably and timely supplement their opening expert reports based on information learned after the service of the opening reports and from the discovery permitted by this Order. The parties shall agree to a date certain for the service of these supplemental reports. The service of these supplemental reports, however, shall not affect the dates for case dispositive motions.

The Parties' Requests for Fees and Expenses

Because neither party substantially prevailed on many of the claims in the motions and requests for relief, fee and expense shifting is denied.

Dated: April 9, 2013

/s/ Collins J. Seitz, Jr.
Collins J. Seitz, Jr.
Special Master